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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CLEARY,
PLAINTIFF

V.

KENNETH KYLER, ET AL.,
DEFENDANTS

CIVIL ACTION NO. 1-CV-00-2125

JUDGE CALDWELL

FILED

APR 30 2002

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT

MARY E. D'ANDREA, CLERK
Per AW

MICHAEL A. COLEMAN DECLARE UNDER PENALTY OF PERJURY;

1. I HAVE INFORMED THIS COURT THAT I HAVE PREPARED LEGAL MOTIONS FOR THE PLAINTIFF IN THIS MATTER AND I MAKE THIS DECLARATION IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AS TO THE ILLEGAL ACTIONS OF THE DEPRIVATIONS AND INJURIES TO THE PLAINTIFF.

2. DEFENDANT'S CLAIM IN THEIR WAIVER OF REPLY TO PLAINTIFF'S COMPLAINT SEVENTEEN AFFIRMATIVE DEFENSES, WHICH PLAINTIFF IS IN DISAGREEMENT ABOUT.

3. DEFENDANT'S CLAIM THAT THEIR ACTIONS WERE OF A NEGLIGENT CHARACTER, WHEN IN FACT THEY DO ADMIT TO THE ACTIONS IN THE ENTIRE WAIVER MOTION AND MOTION FOR SUMMARY JUDGEMENT..... YET, THE DEFENDANT'S ACTIONS TOWARDS THE PLAINTIFF WERE COMMITTED OVER A PERIOD OF TWO YEARS, QUITE A DIFFERENCE FROM ANY ONE ISOLATED INCIDENT OF A NEGLIGENT ACT.

4. DEFENDANT'S HAVING ADMITTED TO THE ACTIONS OF THE DELIBERATE INDIFFERENCE AND RECKLESS DISREGARD OF THE PLAINTIFF'S PROTECTED CONSTITUTIONAL RIGHTS ALONE ARE SUFFICIENT TO SUBSTAIN AND OVERCOME THE SUMMARY JUDGEMENT OF THE DEFENDANT'S AND TO MOVE FORWARD FOR THE HEARING OF THE CLAIMS TO A JURY.

5. THE ELEMENTS OF THIS CASE SPEAK FOR THEMSELVES;

1. THAT YOUR CONSTITUTIONAL OR OTHER RIGHTS WERE VIOLATED, AND
2. THAT THEY WERE VIOLATED BY PERSONS ACTING UNDER THE COLOR OF LAW.

6. DEFENDANTS HAVE ACTED INTENTIONALLY AND WRONGFULLY IN INTIMIDATION, RETALIATION, AND THE MALICIOUS PROSECUTION OF MISCONDUCTS IN RELATION TO THIS CIVIL ACTION AS ONE BEGAN IN MALICE TOWARDS PLAINTIFF WITHOUT PROBABLE CAUSE TO HIS LIBERTY, PERSON, AND PROPERTY THAT ARE ARGUABLE THE FAULT OF THE

PRISON PERSONNEL.

7. THE BASIC ELEMENTS OF THIS CLAIM AND THE OPPOSITION OF THE SUMMARY JUDGEMENT WHICH SHOULD BE ADHERED TO SUSTAIN THE CLAIMS TO MOVE FORWARD FOR A SETTLEMENT OR TRIAL ARE;

1. A DUTY ON THE PART OF THE PRISON PERSONNEL TO FOLLOW A CERTAIN STANDARD OF CARE TO PROTECT PRISONERS FROM UNREASONABLE RISK,
2. A FAILURE BY PRISON PERSONNEL TO PERFORM THAT DUTY, AND
3. AN ACTUAL INJURY CAUSED 'OR PROXIMATELY CAUSED' '...BY THE FAILURE TO PERFORM THAT DUTY.

8. DEFENDANT'S CLAIM IN THEIR MOTION THAT ARE NO FACTUAL MATERIAL FACTS IN DESPUTE. IN REALITY, THERE ARE MANY FACTS IN DISPUTE.

9. **LIABILITY**

PARTIAL/QUALIFIED IMMUNITY;

ONCE AN OFFICIAL...GOVERNMENT EMPLOYEE...DENIES A CONSTITUTIONAL RIGHT, 'UNDER THE COLOR OF LAW' HE OR SHE BECOMES LIABLE TO AN ACTION OF LAW, PREFERABLE 42 U.S.C. 1983 ET SEQ.

[a] THE RELEVANT LAW WAS CLEARLY ESTABLISHED, [b] JUDGEMENT ON THE MERITS BECAUSE OF THE FACTUAL DISPUTES, AND [c] BECAUSE THE OFFICIALS RESPONSE TO THE PLAINTIFF'S CONDITION WAS HIGHLY UNREASONABLE, HENCEFORTH, SUMMARY JUDGEMENT SHOULD BE DENIED. RICHARDSON V. MCKNIGHT, 521 U.S. 399 (1977).

MICHAEL A. COLEMAN

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS, AND/OR ARE TRUE AND CORRECT.

SIGNED THIS 14 DAY OF APRIL, 2002

/s/

Michael A. Coleman
MICHAEL A. COLEMAN
P.O. BOX 99901
PITTSBURGH, PA. 15233

Shirley A Lamb

NOTARIAL SEAL
SHIRLEY A. LAMB, Notary Public
Pittsburgh, Allegheny Co., PA.
My Commission Expires Dec. 7, 2003